

**IN THE  
Supreme Court of the United States**

**OCTOBER TERM, 1989**

**CAJUN ELECTRIC POWER COOPERATIVE**

**Applicants**

**V.**

**THE LOUISIANA PUBLIC SERVICE COMMISSION**

**Respondents**

**ON WRIT OF CERTIORARI  
TO THE SUPREME COURT OF LOUISIANA**

**SUPPLEMENTAL BRIEF IN SUPPORT OF  
PETITION FOR WRIT OF CERTIORARI**

**John Schwab  
Schwab & Walter  
10114 Jefferson Highway  
Post Office Box 80491  
Baton Rouge, Louisiana 70898  
(504) 296-5096**

**James J. Davidson, III  
Davidson, Meaux, Sonnier  
& McElligott  
Post Office Drawer 2908  
Lafayette, Louisiana 70502  
(318) 237-1660**

**Counsel of Record**

**James B. Supple  
Darnall, Biggs, Trowbridge  
Supple & Cremaldi  
Post Office Box 565  
Franklin, Louisiana 70538  
(318) 828-1540**

**Wendell Miller  
Milligan, Miller &  
Bulson  
Post Office Drawer 1225  
Jennings, Louisiana 70546  
(318) 824-6665**

**Rudolph McIntyre  
Post Office Box 426  
Winnsboro, Louisiana 71295  
(318) 435-4205**

**James Funderburk  
Duval, Funderburk,  
Sundbery & Lovell  
Post Office Box 3017  
Houma, Louisiana 70361  
(504) 876-6410**

**James J. Thornton  
Johnson & Thornton  
Post Office Box 4426  
Shreveport, Louisiana  
(318) 221-6294**

**William Shaw  
Shaw & Shaw  
Post Office Drawer 420  
Homer, Louisiana 71040  
(318) 927-6149**

**COUNSEL FOR APPLICANTS**

**TABLE OF CONTENTS**

	<b>Page</b>
Table of Contents .....	i
Table of Authorities .....	ii
Supplemental Argument In Support of the Petition for Writ of Certiorari .....	1
Appendix .....	1A

## TABLE OF AUTHORITIES

	Page
<i>Arkansas Electric Cooperative, Inc. vs. Arkansas Public Service Commission</i> , 461 US 375, 103 S.Ct. 1905, 76 L.Ed. 241, (1983) .....	2

**SUPPLEMENTAL ARGUMENT IN SUPPORT  
OF THE PETITION FOR WRIT OF CERTIORARI**

**MAY IT PLEASE THE COURT:**

Applicants herein respectfully file this, their supplemental brief in support of the previously filed application for writ of certiorari, in order to bring to the Court's attention an intervening matter not available at the time of applicant's initial and last filing, all pursuant to Rule 22.6 of the United States Supreme Court Rules.

By way of reference to the original application, the question presented for review, the jurisdictional statement, the statement of the case, and the argument previously presented herein are re-adopted in their entirety.

Appended hereto is Matter Number 61,243 A, in and for the 10th Judicial District Court, Natchitoches Parish, Louisiana, styled Durwood R. Wilson, Douglas G. Brossette, Sam W. and Mary S. Wailes, Dorwain and Dorothy Glover versus (1) Valley Electric Membership Corporation; (2) Beauregard Electric Cooperative, Inc.; (3) Bossier Rural Electric Membership Corporation; (4) Claiborne Electric Cooperative, Inc.; (5) Concordia Electric Cooperative, Inc.; (6) Dixie Electric Membership Corporation; (7) Jefferson Davis Electric Cooperative, Inc.; (8) Northeast Louisiana Power Cooperative, Inc.; (9) Pointe Coupee Electric Membership Corporation; (10) South Louisiana Electric Cooperative Association; (11) Southwest Louisiana Electric Membership Corporation; (12) Teche Electric Cooperative, Inc.; and (13) Washington-St. Tammany Electric Cooperative, Inc. The referenced suit was filed on the 8th day of September, 1989, and evidences yet another adverse consequence and imminent threat to significant Federal interests brought about by the Louisiana State Supreme Court's failure to uphold the

Federal preemption argument previously raised herein. See Appendix, Page 1.

The law firm of Kelly & Salim of Natchitoches, Louisiana, as purported counsel for the alleged class of plaintiffs above referred to are added as possible additional parties of interest and will be served herewith.

Being ever vigilant of the controlling authority herein, *Arkansas Electric Cooperative, Inc. vs. Arkansas Public Service Commission*, 461 US 375, 103 S.Ct. 1905, 76 L.Ed. 241, (1983), applicants submit that the most recent filing of the aforesaid class action suit by cooperative members, which seeks rebates of virtually all rate increases imposed by the Louisiana Rural Electric Cooperatives over the past more than ten years, points inescapably to the conclusion that unless Federal preemption on the issue of cooperative regulation is recognized, literal financial destruction of the cooperatives who have relied on the Rural Electrification Administration for regulatory function could result.

As is apparent from the appended text, the suit filed by the purported class against the rural electric cooperatives bases its prayer for relief upon a simple premise. It is claimed in said class action suit that since the Louisiana Supreme Court has held that the State statute exempting cooperatives from Public Service Commission regulation is unconstitutional, that therefore all rates employed and/or set without Louisiana Public Service Commission regulatory approval are illegal and must be refunded.

For the more than ten years preceding the present dispute, the rate structures of the rural electric cooperatives in Louisiana have been continually monitored, designed, and approved by REA with a view towards insuring adequate rate of return for the cooperatives to satisfy Federal (REA), debt obligations while maintaining reliable service to the consumers

at the lowest possible cost. A court ordered rebate of these rates will result in certain default of repayment of all REA obligations owed by the distribution cooperatives, and thus the commensurate default of Cajun, the generation and transmission cooperative which relies upon the distribution cooperatives for practically every dollar of cash flow. Such a liquidation of the entire state cooperative system would result in extreme prejudice to the Rural Electrification Administration.

While it cannot be denied that there may be numerous viable defenses to the relief sought by the alleged class in the aforescribed suit, it is hardly imaginable that the possible outcome of such litigation is not so detrimental to REA's interest that finding of preemption in the case of Louisiana cooperatives is now certainly mandated.

For the foregoing reasons, Applicants respectfully urge this Honorable Court to consider the consequences of no action, or adverse action to the cooperatives and the Federal Government (REA) in this litigation. Suits such as the one referenced herein reveal that such adverse consequences are not speculative, but imminent.

Applicants reiterate all matters and concerns previously placed before the Court and offer this supplement in addition thereto in seeking a writ of certiorari herein.

Respectfully submitted,

DAVIDSON, MEAUX, SONNIER  
& McELLIGOTT

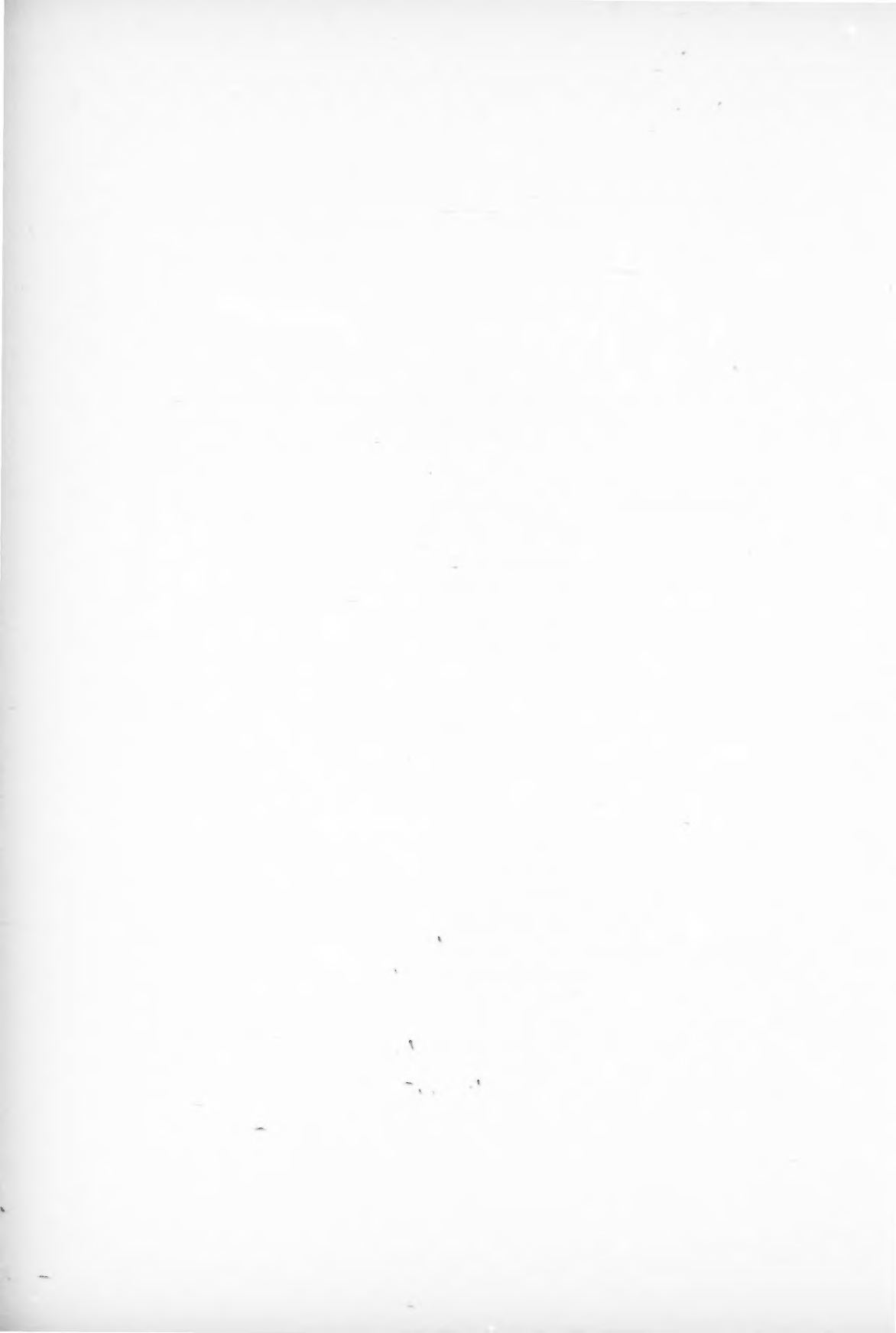
BY: James J. Davidson III per co  
James J. Davidson, III  
810 S. Buchanan Street  
Post Office Drawer 2908  
Lafayette, Louisiana 70502  
(318) 237-1660

SCHWAB & WALTER

BY: John Schwab per co  
John Schwab  
10114 Jefferson Highway  
Post Office Box 80491  
Baton Rouge, Louisiana 70898  
(504) 296-5096

# **APPENDIX**





1A

NUMBER 61,243 A

TENTH JUDICIAL DISTRICT COURT  
NATCHITOCHES PARISH, LOUISIANA

DURWOOD R. WILSON, ET AL

VERSUS

VALLEY ELECTRIC MEMBERSHIP  
CORPORATION, ET AL

FILED  
IRBY L. WHITE, JR.  
CLERK OF DISTRICT COURT  
SEP 8 4:20 PM '89  
s/s Eddie Sollen, Jr.  
CLERK  
NATCHITOCHES PARISH, LA  
(stamp)

CLASS ACTION PETITION

The class action petition of the herein designated plaintiffs, appearing herein as representatives of all persons, partnerships, corporations and other entities similarly situated, having a common and undivided interest in the subject matter of this litigation, and individually, all of whom respectfully represent and show that:

A. DURWOOD R. WILSON, is a resident of the full age of majority of Natchitoches Parish, Louisiana,

2A

B. DOUGLAS G. BROSSETTE, is a resident of the full age of majority of Natchitoches Parish, Louisiana,

C. SAM W. and MARY S. WAILES, husband and wife, and are residents of the full age of majority of Red River Parish, Louisiana,

D. DORWAIN and DOROTHY GLOVER, husband and wife, and are residents of the full age of majority of Red River Parish, Louisiana.

1.

Made defendants herein are the following:

A. VALLEY ELECTRIC MEMBERSHIP CORPORATION, a corporation and/or association with its principal place of business in Natchitoches Parish, Louisiana;

B. BEAUREGARD ELECTRIC COOPERATIVE, INC., a corporation and/or association with its principal place of business in Beauregard Parish, Louisiana;

C. BOSSIER RURAL ELECTRIC MEMBERSHIP CORPORATION, a corporation and/or association with its principal place of business in Bossier Parish, Louisiana;

D. CLAIBORNE ELECTRIC COOPERATIVE, INC., a corporation and/or association with its principal place of business in Claiborne Parish, Louisiana;

E. CONCORDIA ELECTRIC COOPERATIVE, INC., a corporation and/or association with its principal place of business in Concordia Parish, Louisiana;

F. DIXIE ELECTRIC MEMBERSHIP CORPORATION, a corporation and/or association with its principal place of business in East Baton Rouge Parish, Louisiana;

G. JEFFERSON DAVIS ELECTRIC COOPERATIVE, INC., a corporation and/or association with its principal place of business in Jefferson Davis Parish, Louisiana;

H. NORTHEAST LA POWER COOPERATIVE, INC., a corporation and/or association with its principal place of business in Franklin Parish, Louisiana;

I. POINTE COUPEE ELECTRIC MEMBERSHIP CORPORATION, a corporation and/or association with its principal place of business in Pointe Coupee Parish, Louisiana;

J. SOUTH LA ELECTRIC COOPERATIVE ASSOCIATION, a corporation and/or association with its principal place of business in Terrebonne Parish, Louisiana;

K. SOUTHWEST LA ELECTRIC MEMBERSHIP CORPORATION, a corporation and/or association with its principal place of business in Lafayette Parish, Louisiana;

L. TECHE ELECTRIC COOPERATIVE, INC., a corporation and/or association with its principal place of business in Iberia Parish, Louisiana;

M. WASHINGTON-ST. TAMMANY ELECTRIC COOPERATIVE, INC., a corporation and/or association with its principal place of business in Washington Parish, Louisiana.

2.

Plaintiffs, DURWOOD R. WILSON and DOUGLAS G. BROSSETTE, are and have been members and/or shareholders and/or customers of Valley Electric Membership Corporation at all pertinent times herein.

3.

Plaintiffs, SAM W. and MARY S. WAILES and DORWAIN and DOROTHY GLOVER, are and have been members and/or shareholders and/or customers of Bossier Rural Electric Membership Corporation at all pertinent times herein.

4.

Plaintiffs hereinabove represent that they are representatives of a class of plaintiffs which consists of all customers and/or shareholders and/or members of any and all of the defendants during the pertinent times set forth hereinafter and, as such, should be designated as class representatives by this Honorable Court.

5.

The named plaintiffs bring this action on their own behalf and on behalf of all persons similarly situated pursuant to Article 591, et seq. of the Louisiana Code of Civil Procedure. The class described hereinabove is so numerous that joinder of all members in this action would be impractical. The defendants are believed to have knowledge of the names, addresses, and numbers of the members and/or shareholders and/or customers of said utility corporations who are currently being and who have been illegally and unconstitutionally charged rate increases for which all members of the class are entitled to reimbursement. It is further alleged that said defendants have knowledge of the exact and/or approximate size of the class described hereinabove which plaintiffs allege consists of thousands of members and/or shareholders and/or customers.

6.

The questions of law and fact presented in this complaint are common to the classes which primarily involves the unconstitutional and illegal increasing of utility rates charged to the members of the class. The claims of the representative parties herein are typical and, in fact, exact, except as to amount of the classes.

7.

The law firm of Kelly & Salim, attorneys for plaintiffs will fairly and adequately protect the interest of the classes.

8.

That the common questions of law and fact predominate over any questions affecting only individual members, and

that a class action in this matter is superior to other available methods for the fair and efficient adjudication of this controversy.

9.

In 1978, La. R.S. 45:1163, which provided for the regulation of rates and service over public utilities by the Public Service Commission was amended so as specifically to dispense with the need for the Public Service Commission's approval of the rate increases of all defendants herein.

10.

In 1983, La. R.S. 12:426 was amended to allow the members and/or customers and/or shareholders of an electric cooperative to vote to come under the jurisdiction of the Public Service Commission.

11.

Pursuant to La. R.S. 12:426, the members and/or shareholders of several, but not all, of the defendants have voted to come under the jurisdiction of the Public Service Commission at various times since the amendment of that statute in 1978.

12.

The members and/or shareholders of defendants, BEAUREGARD ELECTRIC COOPERATIVE, INC., BOSSIER RURAL ELECTRIC MEMBERSHIP CORPORATION, CONCORDIA ELECTRIC COOPERATIVE, INC., and DIXIE ELECTRIC MEMBERSHIP CORPORATION elected to come under the supervision and jurisdiction of the Public Service Commission effective August 1, 1984.

7A

13.

The members and/or shareholders of defendant, VALLEY ELECTRIC MEMBERSHIP CORPORATION elected to come under the supervision and jurisdiction of the Public Service Commission effective January 1, 1987.

14.

The members and/or shareholders of defendant, WASHINGTON-ST. TAMMANY ELECTRIC COOPERATIVE, INC., elected to come under the supervision and jurisdiction of the Public Service Commission effective October 1, 1986.

15.

The members and/or shareholders of defendant, POINTE COUPEE ELECTRIC MEMBERSHIP CORPORATION elected to come under the supervision and jurisdiction of the Public Service Commission effective September 16, 1987.

16.

The members and/or shareholders of all other defendants, namely: CLAIBORNE ELECTRIC COOPERATIVE, INC., JEFFERSON DAVIS ELECTRIC COOPERATIVE, INC., NORTHEAST LA POWER COOPERATIVE, INC., SOUTH LA ELECTRIC COOPERATIVE ASSOCIATION, SOUTHWEST LA ELECTRIC MEMBERSHIP CORPORATION and TECHE ELECTRIC COOPERATIVE, INC. have not elected to come under the jurisdiction and supervision of the Public Service Commission as of the date hereof.

17.

Article IV, Section 21(B) of the Louisiana Constitution of 1974, provides in pertinent part that the Public Service



Commission "shall regulate all common carriers and public utilities and have such other regulatory authority as provided by law."

18.

La. R.S. 45:1163 has been declared unconstitutional by the Louisiana Supreme Court in that the legislature did not have the constitutional authority to alter the Public Service Commission's jurisdiction over any business defined as a public utility at the time the 1974 Constitution was adopted.

19.

All previous rate increases by the defendants enacted from the effective date of the amendment of R.S. 45:1163 in 1978 until the members of each defendant voted to once again be subject to the jurisdiction of the Public Service Commission is and was null, void and invalid as any such rate increases were enacted pursuant to laws and statutes which were and are unconstitutional and illegal.

20.

Therefore, all plaintiffs, consisting of all members and/or customers and/or shareholders of each of the defendants are entitled to a rebate of all rate increases invalidly and illegally enacted by the defendants as set forth herein.

21.

Plaintiffs have been forced to retain the services of an attorney in connection with this matter and should be awarded reasonable attorney's fees.

Venue is proper as to all defendants pursuant to Code of Civil Procedure Article 593.

WHEREFORE, plaintiffs pray that a copy of this petition be served upon each defendant named herein.

Plaintiffs further pray for an order of this Honorable Court that the action brought as a class action herein shall be so maintained on the ground that it is a proper class action on all issues as appear more fully from the allegations of the complaint and that a rule nisi issue herein directed to all defendants ordering them to show cause, if any they can, why said action should not be certified as a valid and proper class action and certifying that the named plaintiffs herein be deemed representatives of said class and that the representation by the law firm of Kelly & Salim should be fair and adequate for the protection of the interest of the class.

Plaintiffs further pray that after necessary and legal delays and due proceedings had that there be judgment in favor of the plaintiffs both individually and as class representatives against the defendants for a rebate of all rate increases invalidly, unconstitutionally and illegally charged to them by each of the defendants, together with legal interest thereon until paid.

Plaintiffs further pray that they be awarded reasonable attorney fees for the prosecution of this action, together with all costs of these proceedings.

Plaintiffs further pray for all other such relief as law, equity and the nature of the case may permit.

KELLY & SALIM  
137 St. Denis Street  
P. O. Box 756  
Natchitoches, LA 71458-0756  
(318) 352-2353

By s/s Donald G. Kelly  
Donald G. Kelly

s/s Jeffrey H. Thomas  
Jeffrey H. Thomas

ATTORNEYS FOR PLAINTIFFS

